Chas. Y. Punton, Sheriff of Cass County, North Dakota.

By Ingham Idso, Deputy.

Sheriff's Fees:

Service	$ .60
Copies	$ .25
Mileage	$ .50
Total	$1.35

[fol. 11]

IN DISTRICT COURT OF CASS COUNTY

[Title omitted]

ANSWER

Comes now the defendant WDAY, Inc. for its separate answer to the complaint herein and for its first defense:

I.

Admits Paragraphs I, II, III of the complaint.

II.

Admits the acts complained of in Paragraphs IV, V, VI and VII of the complaint but denies that such acts were willful or malicious on the part of this defendent. (sic)

III.

Alleges that WDAY, Inc. was on October 29, 1956 and now is the owner, licensee and operator of a visual and sound radio broadcasting station and that the alleged defamatory statements made by the defendant A. C. Townley were made by A. C. Townley as a part of a visual and sound radio broadcast by A. C. Townley and not by an agent or employee of WDAY, Inc.

IV.

That Section 14-0209 of the 1953 Supplement to the North Dakota Revised Code of 1943 absolves WDAY, Inc. of liability for any damages caused by the acts complained of.

For its second defense the defendant WDAY, Inc. alleges:

I.

Realleges all of Paragraphs I, II and III of this answer.

[fol. 12]

II.

That the acts complained of took place during the national election campaign of 1956 and the defendant A. C. Townley was a duly qualified candidate for the office of United States Senator for the State of North Dakota in that campaign.

III.

That prior to the occurrence of the acts complained of, other duly qualified candidates for the office of United States Senator for the State of North Dakota, to wit: Milton R. Young and Quentin N. Burdick, had, during the course of such campaign, requested the use of the broadcasting facilities of WDAY, Inc. which requests had been granted by WDAY, Inc. and, in the use of such facilities, agents and employees of WDAY, Inc. had caused such other candidates to be photographed and recorded for delayed broadcasts, which photographic film was subsequently broadcast both orally and visually before the date of the acts complained of but which broadcasts made no reference to the plaintiff, Farmers Educational and Cooperative Union of America or to the defendant, A. C. Townley.

IV.

That sometime prior to October 29, 1956, but after WDAY, Inc.'s facilities had been used by Milton R. Young and Quentin N. Burdick as alleged above, A. C. Townley requested an equal opportunity to use WDAY, Inc.'s broadcast facilities and tendered to WDAY, Inc. a script of the statement he proposed to make on such facilities; that WDAY, Inc. officials, employees and attorney examined the script and notified A. C. Townley that it believed certain statements therein to be false and that if such statements were in fact false, they were libelous, and WDAY, Inc.

preferred not to broadcast such script but would broadcast it only if A. C. Townley demanded that it be broadcast under the mandate of Section 315 of the Communications Act of 1934 (Title 46 USCA Section 315); that such demand was made by A. C. Townley of WDAY, Inc. and the script was broadcast as alleged by the plaintiff, WDAY, Inc. granting to A. C. Townley the same opportunity to use the WDAY, Inc. facility as it had accorded to Milton R. Young and Quentin N. Burdick.

[fol. 13] V.

That each three years as a licensee of the Federal Communications Commission WDAY, Inc. is required to apply for a renewal of its license in order to permit it to continue to operate its broadcasting facility; that such renewal is granted only after a finding by the Federal Communications Commissions (sic) that the public interest, convenience, and necessity will be served thereby; that it is the practice of the Federal Communications Commission, in considering such applications for renewal, to consider, among other things, whether the licensee has in fact complied with applicable statutes and regulations and the Federal Communications Commission's interpretation thereof; that on the occasion of considering the application for a renewal of WDSU Broadcasting Corporation, the Federal Communications Commission found that that licensee had refused to broadcast a political candidate's script, believing that certain parts thereof were libelous and defamatory, and that such conduct on the part of the licensee was ground for the Federal Communications Commission to refuse to renew the licensee's application; that the license of WDSU Broadcasting Corporation was nevertheless renewed in view of the Federal Communications Commission's further finding of "the state of uncertainty and confusion as to the scope and effect of the censorship prohibition of Section 315", and that in view of this confusion the applicant had acted in good faith; that the Federal Communications Commission, in renewing the license of WDSU Broadcasting Corporation stated, "We will, however, in the future, consider that there is no open

question with respect to censorship on the part of the licensee of material broadcast under Section 315 and licensees will be expected to abide strictly by the provisions of that section".

VI.

That as a licensee of the Federal Communications Commission, WDAY, Inc. was, under the provisions of Section 315 of the Communications Act of 1934 and regulations promulgated pursuant thereto and the Federal Communications Commission's interpretation thereof, legally bound to accord to A. C. Townley an equal opportunity to use such broadcasting facilities as were accorded to Milton R. Young and Quentin N. Burdick.

[fol. 14] VII.

That by reason of the aforesaid statute, regulations and interpretations thereof, WDAY, Inc. was denied the power of censorship of the material broadcast by A. C. Townley and broadcast such material only under the mandate of such statute, regulations and interpretations, and is without fault.

Wherefore, the defendant WDAY, Inc. prays that as to itself the complaint herein be dismissed, and for such other relief as may be proper.

Dated at Fargo, North Dakota this 20th day of May, 1957.

Bangert & Bangert, By Harold Bangert, Attorneys for Defendat (sic) WDAY, Inc., 207 North 5th Street, Fargo, North Dakota.

[fol. 15]

IN DISTRICT COURT OF CASS COUNTY

[Title omitted]

DEMURRER TO ANSWER—May 22, 1957

Comes now the plaintiff and demurs to the answer interposed herein by the defendant WDAY, Inc., upon the following grounds and for the following reasons:

I.

That the defendant's first defense, which sets up Section 14-0209 of the 1953 Supplement to the North Dakota Revised Code of 1943, appearing in paragraph IV. of said first defense, does not state facts sufficient to constitute a defense, in that:

(a) That Section 14-0209 of the 1953 Supplement to the NDRC of 1943, pleaded as the first defense to the plaintiff's cause of action herein, is unconstitutional, invalid and void insofar as it attempts or purports to absolve the defendant from any liability for libel, slander or negligence; and that such statute contravenes the due process clause of the Fourteenth Amendment to the Constitution of the United States of America; and that such statutes specifically referred to above, does unreasonably and unconstitutionally seek to deprive the plaintiff of its substantive right to protect its property, including it (sic) reputation, and it likewise denies the plaintiff equal protection of the law, under the equal protection clause.

(b) That Section 14-0209 of the 1953 Supplement to the NDRC of 1943 is unconstitutional, invalid and void in that it violates the provisions of Section Nine of the Constitution of the State of North Dakota, and specifically violates the provision that "every man may freely write, speak and publish his opinions on all subjects, being responsible for the abuse of this privilege".

[fol. 16] (c) That Section 14--209 (sic) of the 1953 Supplement to the NDRC of 1943 is unconstitutional, invalid and void in that it violates Section Twenty-two of the Constitution of the State of North Dakota, and particularly that provision that, "All courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without sale, denial or delay".

(d) That said Section 14-0209 of the 1953 Supplement to the NDRC of 1943 is unconstitutional, invalid and void in that it is in violation of the provisions of Section Eleven

of the Constitution of the State of North Dakota providing that all laws of a general nature shall have uniform operation; in this regard it is allged (sic) and said state statute reasonably favors radio and television station, over other forms of communication media.

(e) That Section 14-0209 of the 1953 Supplement to the NDRC of 1943 is likewise void and invalid, in that the Congress of the United States has occupied the interstate field of radio and television communications, and has not legislated immunity from actions for defamation.

II.

That the defendant's second defense, which sets up Section 315 of the Communications Act of 1934 (Title 47 USCA 315), appearing in paragraphs II, III, IV. V. VI and VII of said second defense, does not constitute facts sufficient to constitute a defense, in that:

(a) That even though the said speech of the defendant A. C. Townley was made after Quentin Burdick and Milton R. Young had used the facilities of the defendant, WDAY, Inc., it dealt with different matters from that which was referred to by said other candidates for the U. S. Senate, and was the only speech made by the defendant, A. C. Townley over the facilities of the defendant, WDAY, Inc., and thus said Section 315 did not give immunity to the defendant, WDAY, Inc., from actions for defamation, and that said speech was not broadcast under the compulsion, protection or authorization of said Section 315 of the Communications Act.

(b) That if said Section 315 of the Communications Act [fol. 17] is applicable, it does not grant immunity to the defendant, WDAY, Inc., from actions for defamation; and that if construed as granting immunity, said Act would be unconstitutional, invalid and void and in violation of the Fourteenth Amendment of the Constitution of the United States of America, contravene the due process clause of said Fourteenth Amendment, deprive the plaintiff of a substantive right to protect is (sic) property, including its reputation and deny to the plaintiff equal protection of the

law, under the equal protection clause of the Fourteenth Amendment.

(c) That if said Section 315 of the Communications Act is applicable and construed to grant immunity from actions for defamation, said Act would be unconstitutional, invalid and void and in violation of the Fifth Amendment to the Constitution of the United States of America, contravene the due process clause, and deprive the plaintiff of liberty and property and a substantive right to protect its property, including its reputation, under the said Fifth Amendment.

(d) That by the terms of said Section 315 of the Communications Act it provides that, "No obligation is imposed on any licensee to allow the use of its station by any such candidate".

(e) That the defendant WDAY, Inc., by actually participating in the mchanical (sic) preparation, taping and recording of the script and film necessary for the broadcast complained of and knowing the statements therein were false and defamatory, and thereafter permitting and allowing said broadcast, is not shielded by the terms and provisions of said Section 315 of the Communication Act.

III.

That the Answer does not state facts sufficient to constitute a defense.

Wherefore, the plaintiff prays that it may be awarded judgment as prayed for in the complaint.

Quentin N. Burdick, Attorney for Plaintiff, 310 10th Ave. S., Fargo, N. Dak.
James F. X. Conmy, Attorney for Plaintiff, 212 4th St., Bismarck, N. Dak.

Dated this 22nd day of May, 1957.

[fol. 18]

IN DISTRICT COURT OF CASS COUNTY

[Title omitted]

RULINGS ON DEMURRER—May 23, 1957

This matter having come on for hearing on May 23, 1957, pursuant to agreement of counsel, on the Plaintiff's demurrer to the Defendant's answer, and Quentin N. Burdick, having appeared for the Plaintiff, and Harold W. Bangert for the defendant, WDAY, Inc., it is

Ordered: That the Plaintiff's demurrer to the first defense in the defendant's answer be sustained, and that the Plaintiff's demurrer to the second defense in the defendant's answer be overruled.

Dated at Fargo, North Dakota this 23rd day of May, 1957.

By the Court, John C. Pollock, Judge.

[fol. 19]

IN DISTRICT COURT OF CASS COUNTY

FARMERS EDUCATIONAL AND COOPERATIVE UNION OF AMERICA, NORTH DAKOTA DIVISION, a corporation, Plaintiff,

v.

A. C. TOWNLEY and WDAY, INC., a corporation, Defendants.

Findings of Fact, Conclusions of Law and Order for Judgment—May 23, 1957

This matter came on for hearing pursuant to agreement of the Plaintiff and the defendant, WDAY, Inc., before the Honorable John C. Pollock, one of the Judges of the above named court, on the 23rd day of May, 1957, at 9:30 A.M. in

the office of court in the City of Fargo, County of Cass, State of North Dakota.

The Plaintiff was represented by its counsel, Quentin N. Burdick, and the Defendant, WDAY, Inc. by its counsel, Harold W. Bangert. The defendant, A. C. Townley, was not represented.

It appearing from the record that the complaint herein was duly served on WDAY, Inc. and WDAY, Inc. having answered and the Plaintiff having demurred to the said answer and the court having overruled the demurrer in part and sustained the demurrer in part and the plaintiff having elected to plead no further and the defendant, WDAY, Inc. having elected to plead no further and the defendant WDAY, Inc. having moved for judgment and the parties having presented oral argument on such motion, and the Court now being fully advised in the premises does make and file the following:

Findings of Fact

I.

The Plaintiff and defendant, WDAY, Inc. are North Dakota corporations duly organized and existing under and by virtue of the Laws of the State of North Dakota.

[fol. 20]

II.

The defendant, WDAY, Inc. was at all time mentioned herein, engaged in the Radio and Television broadcasting business from its studios in Fargo, North Dakota under a license duly issued by the Federal Communications Commission.

III.

The defendant, A. C. Townley, was at the time of the acts complained of, a duly qualified candidate for the office of United States Senator for the State of North Dakota during the national election campaign of 1956.

IV.

Prior to the occurrence of the acts complained of, other duly qualified candidates for the office of United States

Senator for the State of North Dakota, to-wit: Milton R. Young and Quentin N. Burdick had, during the course of such national election campaign of 1956, requested the use of the broadcasting facilities of WDAY, Inc. which requests had been granted by WDAY, Inc. and in the use of such facilities, agents and employees of WDAY, Inc. had caused such candidates to be photographed and recorded for delayed broadcasts, which photographic film was subsequently broadcast both orally and visually before the date of the acts complained of but which broadcasts made no reference to the plaintiff, Farmers Educational and Cooperative Union of America, or to the defendant, A. C. Townley.

V.

That sometime prior to October 29, 1956, but after WDAY, Inc.'s facilities had been used by Milton R. Young and Quentin N. Burdick, A. C. Townley requested an equal opportunity to use WDAY, Inc.'s broadcast facilities and tendered to WDAT, (sic) Inc. a script of the statement he proposed to make on such facilities; thereupon WDAY, Inc. officials, employees and attorney examined the script and notified A. C. Townley that it believed certain statements therein to be false and that if such statements were in fact false, they were libelous, and WDAY, Inc. preferred not to broadcast such script but would broadcast it only if A. C. Townley demanded that it be broadcast under the mandate of Section 315 of the Communications Act of 1934 (Title 46 USCA Section 315). Such demand was made by A. C. Townley of of (sic) WDAY, Inc. and the script was broadcast as alleged by the plaintiff, WDAY, Inc. granting to A. C. Townley the same opportunity to [fol. 21] use the WDAY, Inc. facilities as it had accorded to Milton R. Young and Quentin N. Burdick.

VI.

That on October 29, 1956, in the forenoon of said day, defendant, A. C. Townley, using and employing the equipment and facilities of the defendant WDAY, Inc., photographed, published, reproduced, filmed, uttered, copied and

exhibited the words and visual image of the defendant, A. C. Townley, which words were as follows:

"To: North Dakota Republicans, Farmers, Bankers and Businessmen

"The Farmers Union program fully carried out as planned, not as it is planned by the farmer members, but as it is planned by the Farmers Union Dictators, would establish a Communist Farmers Union Soviet right here in North Dakota.

"This Farmers Union is now rapidly developing on your main street right here under your nose. This Farmers Union has already taken over vast business enterprise and threatens every businessman in North Dakota.

"For ten years, Senator Young has used the power and prestige of the high office that he holds to serve this Farmers Union. He has not raised his voice or hand to stay the communist viper gnawing at your private ownership and liberty. On the contrary, Young says everything and does everything the Farmers Union tell him to do or say—Democrat Alex Lind, Democrat Glen Talbott, and Democrat Bill Thatcher—tell him what to say and how to vote on every matter that concerns the Farmers Union.

"In a letter to the voters dated October 10, 1956, Milton Young says, "The Congressional Record will show that I have lead the fight for 90% parity and I have letters from M. W. Thatcher thanking me."

"Milton Young has no letter from President Eisenhower thanking him for supporting the Republican farm program because the bogus Republican, Milton Young, supports the bogus Democrat farm program and gets his orders from the Democrat Farmers Union. Young is Republican in name only. His works are Communist, Democrat, Farmers Union works.

[fol. 22] "Young and Burdick both support the Democrat Farmer program. Both men take orders from Communist controlled Democrat Farmers Union and now this amazing fact—Communist infiltration and power has gone so far in North Dakota that the Demo-

cratic Party supports 100% the Democratic Farmers Union candidate and the Republican Party supports 9[illegible]% the Democratic Farmers Union candidate. The communists can't lose unless the Americans wake up and wake up fast.

"Mr. Republican farmer, Republican banker, Republican businessman, do you vote and work Republican with Eisenhower for the Republican farm program and against the Farmers Union soviet or do you now still walk hand in hand with communist Farmers Union dictators—communist Democrat Glenn Talbott, Democrat Bill Thatcher and their willing servant, Milton Young, to build this deadly tyranny.

"If you do, then the jig is up and the communist Farmers Union soviet is here for sure. I will talk over KFYR at 7:30 and KFGO at 8:30 every night this week. Also, Monday night before you vote. Please get your freinds to listen."

VII.

That each three years as a licensee of the Federal Communications Commission, WDAY, Inc. is required to apply for a renewal of its license in order to permit it to continue to operate its broadcast facility; that such renewal is granted only after a finding by the Federal Communications Commission that the public interest, convenience, and necessity will be served thereby; that it is the practice of the Federal Communications Commission, in considering such application for renewal, to consider, among other things, whether the licensee has in fact complied with applicable statutes and regulations and the Federal Communications Commission's interpretation thereof; that on the occasion of considering the application for a renewal of WDSU Broadcasting Corporation, the Federal Communications Commission found that the licensee had refused to broadcast a political condidate's (sic) script, believing that certain parts thereof were libelous and defamatory, and that such conduct on the part of the licensee was ground for the Federal Communications Commission to refuse to renew the licensee's application; that

the license of WDSU Broadcasting Corporation was never-
[fol. 23] theless renewed in view of the Federal Communications Commission's further finding of "the state of uncertainty and confusion as to the scope and effect of the censorship prohibition of Section 315", and that in view of this confusion the applicant had acted in good faith; that the Federal Communications Commission, in renewing the license of WDSU Broadcasting Corporation stated, "We will, however, in the future, consider that there is no open question with respect to censorship on the part of the licensee of material broadcast under Section 315 and licensees will be expected to abide strictly by the provisions of that section".

VIII.

That as a licensee of the Federal Communications Commission, WDAY, Inc. was, under the provisions of Section 315 of the Communications Act of 1934 and regulations promulgated pursuant thereto and the Federal Communications Commission thereof, legally bound to accord to A. C. Townley an equal opportunity to use such broadcasting facilities as were accorded to Milton R. Young and Quentin N. Burdick.

IX.

That Section 14-0209 of the 1953 Supplement to the North Dakota Revised Code of 1943 purports to absolve from liability the owner, licensee or operator of a visual or sound radio broadcasting station, for any damages, for any defamatory statement, published or uttered in, or of a part of a visual or sound radio broadcast, by one other than such owner, licensee, or operator, or agent or employee thereof.

From the foregoing Findings of Fact, the Court now makes the following:

Conclusions of Law

As to the Plaintiff's demurrer to the defendant's, WDAY, Inc., first defense, that such defense does not state facts sufficient to constitute a defense, in that:

I.

That Section 14-0209 of the 1953 Supplement to the NDRC of 1943, pleaded as the first defense to the plaintiff's cause of action herein, is unconstitutional, invalid and void insofar as it attempts or purports to absolve the defendant from any liability for libel, slander or negligence; and that such statute contravenes the due process clause of the Fourteenth Amendment to the Constitution [fol. 24] of the United States of America; and that such statutes specifically referred to above, does unreasonably and unconstitutionally seek to deprive the plaintiff of its substantive right to protect its property, including its reputation, and it likewise denies the Plaintiff equal protection of the law, under the equal protection clause.

II.

That Section 14-0209 of the 1953 Supplement to the NDRC of 1943 is unconstitutional, invalid and void in that it violates the provisions of Section Nine of the Constitution of the State of North Dakota, and specifically violates the provision that "every man may freely write, speak and publish his opinions on all subjects, being responsible for the abuse of this privilege".

III.

That Section 14-0209 of the 1953 Supplement to the NDRC of 1943 is unconstitutional, invalid and void in that it violates Section Twenty-two of the Constitution of the State of North Dakota, and particularly that provision that, "All courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without sale, denial or delay".

IV.

That said Section 14-0209 of the 1953 Supplement to the NDRC of 1943 is unconstitutional, invalid and void in that it is in violation of the provisions of Section Eleven of the Constitution of the State of North Dakota providing